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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,186	01/26/2004	Toru Tsukada	Q79580	6504
65565	7590	08/14/2009	EXAMINER	
SUGHRUE-265550			FENSTERMACHER, DAVID MORGAN	
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08/14/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: TORU TSUKADA and SOICHIRO KATO

Application No. 10/763,186
Technology Center 3600

Mailed: August 13, 2009

Before MARIA VIGNONE, *Supervisory Trial Clerk.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on November 19, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

REQUEST TO REOPEN PROSECUTION

Appellants filed an Amendment on March 6, 2008, in response to Examiner's new grounds of rejection in the Answer mailed January 11, 2008. There is no indication on the record that the Examiner has reopened prosecution.

In accordance with 37 CFR 41.39(b)(2):

"A reply brief may not be accompanied by any amendment, affidavit . . . or other evidence. If a reply brief filed pursuant to this section is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under paragraph (b)(1) of this section."

Because the Amendment filed March 6, 2008, addressed the New Grounds of Rejection in the Examiner's Answer, it will be treated as a request that prosecution be reopened before the examiner. See MPEP §1208 for details.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- 1) consider the Amendment/Request to Reopen Prosecution filed March 6, 2008, as required; and
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

MV/saw

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